



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



C. HEIDI GRETHOR  
DIRECTOR

February 23, 2018

CERTIFIED MAIL

Ms. Mary Setnicar, Chief  
RCRA/TSCA Programs Section (LR-8J)  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

*Received 3/2/2018  
Land & Chemicals Div  
jag*

Dear Ms. Setnicar:

SUBJECT: Attorney General's Statement (AGS), Final Express Authorization Revision  
Application (EARA) for Michigan's Hazardous Waste Management Program

This letter is in response to electronic communications received from Ms. Judy Greenberg, of your staff, regarding the January 11, 2018, transmission of the signed and sealed AGS, which completed Michigan's final EARA for the federal Resource Conservation and Recovery Act of 1976, as amended (RCRA), Revision Checklists 229 - 235. The AGS was provided with my authorization in accordance with the state's RCRA Work Plan for Fiscal Year 2018 and Title 40 of the Code of Federal Regulations, Section 271.21, Procedures for Revision of State Programs.

We continue to look forward to the prompt authorization of our Hazardous Waste Management Program.

If you have any questions, please contact Ms. Ronda L. Blayer, Environmental Engineering Specialist, Hazardous Waste Section, Waste Management and Radiological Protection Division (WMRPD), Michigan Department of Environmental Quality (MDEQ), at 517-284-6555; blayerr@michigan.gov; or MDEQ, WMRPD, P.O. Box 30241, Lansing, Michigan 48909-7741; or you may contact me.

Sincerely,

Jack Schinderle, Director  
Waste Management and Radiological  
Protection Division  
517-284-6551

cc: Ms. Judy Greenberg, United States Environmental Protection Agency, Region 5  
Mr. Allan B. Taylor, MDEQ  
Mr. David Slayton, MDEQ  
Ms. Ronda L. Blayer, MDEQ  
Amendment 11, Authorization Application (for 4/5/17 rules), Official Authorization  
Application File, Draft 2



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



C. HEIDI GRETHOR  
DIRECTOR

January 11, 2018

CERTIFIED MAIL

Ms. Mary Setnicar, Chief  
RCRA/TSCA Programs Section (LR-8J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

Dear Ms. Setnicar:

SUBJECT: Signed Attorney General's Statement for Final Express Authorization Revision  
Application for Michigan's Hazardous Waste Management Program

Enclosed please find the final Attorney General's Statement (AGS) with original signature, dated January 8, 2018, and seal as requested by Ms. Judy Greenberg of your staff on September 13, 2017. This completes Michigan's final express authorization revision application for the federal Resource Conservation and Recovery Act of 1976, as amended, (RCRA) Revision Checklists 229 - 235. The AGS is being provided in accordance with the state's RCRA Work Plan for Fiscal Year 2018 and Title 40 of the Code of Federal Regulations, Section 271.21, Procedures for Revision of State Programs. We look forward to prompt authorization of Michigan's Hazardous Waste Management Program.

If you have any questions, please contact Ms. Ronda L. Blayer, Environmental Engineering Specialist, Hazardous Waste Section, Waste Management and Radiological Protection Division (WMRPD), Michigan Department of Environmental Quality (MDEQ), at 517-284-6555; [blayer@michigan.gov](mailto:blayer@michigan.gov); or MDEQ, WMRPD, P.O. Box 30241, Lansing, Michigan 48909-7741; or you may contact me.

Sincerely,

*Allan B. Taylor*

Allan B. Taylor, Section Manager  
Hazardous Waste Section  
Waste Management and Radiological  
Protection Division  
517-614-7335

Enclosure

cc: Ms. Judy Greenberg, U.S. Environmental Protection Agency, Region 5  
Mr. David Slayton, MDEQ  
cc/enc: Ms. Ronda L. Blayer, MDEQ  
Amendment 11, Authorization Application (for 4/5/17 rules), Official Authorization  
Application File, Draft 2

**ATTORNEY GENERAL STATEMENT  
FOR FINAL AUTHORIZATION FOR CHANGES  
TO THE FEDERAL HAZARDOUS WASTE PROGRAM**

I hereby certify, pursuant to my authority as Attorney General and in accordance with Section 3006(b) of the federal Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (Title 42 of the United States Code, Section 6901 *et seq.*), and Title 40 of the Code of Federal Regulations (CFR), Part 271, that in my opinion the laws of the state of Michigan provide adequate authority to carry out the hazardous waste program set forth in the Program Descriptions submitted by the Michigan Department of Environmental Quality in support of the program authorization granted on June 1, 1999, and the Program Description Addendums submitted in support of the program authorization granted July 31, 2002; March 9, 2006; January 7, 2008; March 2, 2010; August 28, 2015; and this Addendum, and to meet the requirements of 40 CFR, Part 271, Subpart A. The specific authorities provided are contained in statutes or regulations lawfully adopted and in effect at the time this statement is signed. The statutory authorities for the state are documented in the Michigan Abbreviated RCRA Statutory Checklist, dated April 5, 2017, and attached to this statement (see Attachment 1). In my opinion, statutes relied on in previously approved authorization applications have not been amended, modified, or revised by statute or judicial decision in a way that diminishes or interferes with the authority to carry out the previously authorized hazardous waste program to meet the requirements of 40 CFR, Part 271, Subpart A.

The provisions for which the state is seeking authorization are documented in the RCRA Revision Checklists, which were submitted to the U.S. Environmental Protection Agency, Region 5, in conjunction with Region 5's review and approval of the proposed revisions to the subject administrative rules. Any differences between the state provisions and the federal provisions are noted on the RCRA Revision Checklists. The official state regulations may be found in Michigan Administrative Code, R 299.9101 *et seq.*, effective April 5, 2017. This statement certifying Michigan's authority to carry out the program supplements my predecessors' certifications that supported the program authorizations granted on October 30, 1986; January 23, 1990; June 24, 1991; November 30, 1993; January 13, 1995; April 8, 1996; June 1, 1999; July 31, 2002; March 9, 2006; January 7, 2008; March 2, 2010; and August 28, 2015.



Signature

for Bill Schuette  
Attorney General  
State of Michigan

Date

1/8/18

Attachment 1

Michigan Abbreviated RCRA Statutory Checklist

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# MICHIGAN ABBREVIATED RCRA STATUTORY CHECKLIST

Title of Legislation/Date Enacted: Part 111, Hazardous Waste Management, Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, up to and including, 2014 PA 287, effective September 23, 2014

Title of Legislation/Date Enacted: Michigan's Administrative Procedures Act, 1969 PA 306, originally enacted July 1, 1970, as amended

Date Abbreviated RCRA Statutory Checklist Prepared: April 5, 2017

Statutory Element	Part 271 Cites	RCRA Cites	Michigan Complied Law (MCL) and Michigan Administrative Code (MAC) Cites
<b>I. DEFINITIONS</b>			
40 CFR Part 271 doesn't specifically address definitions of terms. The federal program relies on various definitions to establish the applicability and scope of the hazardous waste regulations. State definitions should be at least as stringent as their federal counterparts. States should have the authority to define the following terms in a manner at least as stringent as the federal program:			
Disposal	N/A	§1004(3)	MCL 324.11102(4)
Generator	N/A	Not in RCRA; see 40 CFR §260.10	MCL 324.11103(2)
Hazardous waste	N/A	§1004(5)	MCL 324.11103(3)
Manifest	N/A	§1004(12)	MCL 324.11103(8)
Person	N/A	§1004(15)	MCL 324.301(h)
Storage	N/A	§1004(33)	MCL 324.11104(4)
Transport	N/A	Not in RCRA; see 40 CFR §260.10	MAC R 299.9108(i)
Treatment	N/A	§1004(34)	MCL 324.11104(9)
Treatment, storage, or disposal facility (TSDF)	N/A	Not in RCRA; see 40 CFR §260.10	324.11102(5) and 324.11104(5) and (10) and MAC R 299.9103(s)
Waste (solid)	N/A	§1004(27)	MCL 324.11104(3) and 324.11506(1) and MAC R 299.9109(ji) and R 299.9202
Remarks of the Attorney General: None			
<b>II. HAZARDOUS WASTE IDENTIFICATION AND LISTING</b>			
1. Authority to adopt a set of characteristics for identifying hazardous waste and list of hazardous wastes that are no less stringent than, and consistent with, the federal program, and to control all hazardous wastes controlled under 40 CFR Part 261.	271.9(a)	§§3001(a), (b), (d), (e), and (f) and 3018(b)	MCL 324.11103(3), 324.11105, and 324.11126 to 324.11128
2. <u>Delisting (Optional)</u> : Authority to provide a delisting mechanism with regulations equivalent to 40 CFR §§260.20(b) and 260.22 and that meets the requirements of RCRA §3001(f)(1) and (2).	271.9(b)	§3001(b) and (f)	Same as above (State has partial delisting authority; cleanup wastes only)
Remarks of the Attorney General: None			
<b>III. STANDARDS FOR GENERATORS</b>			
Authority to regulate all generators the EPA regulates under 40 CFR Part 262, and to adopt requirements that are no less stringent than, and consistent with, the federal generator requirements.	271.10	§§3001, 3002, and 3017	MCL 324.11103(2), 324.11105, 324.11126, 324.11127, and 324.11138
Remarks of the Attorney General: None			

<b>IV. STANDARDS FOR TRANSPORTERS</b>			
Authority to regulate all transporters the EPA regulates under 40 CFR Part 263, and to adopt requirements that are no less stringent than, and consistent with, the federal transporter requirements.	271.11	§§3001 and 3003	MCL 324.11104(8), 324.11105, 324.11126, 324.11127, 324.11132a, 324.11133, and 324.11136
Remarks of the Attorney General: None			
<b>V. STANDARDS FOR HAZARDOUS WASTE TSDFs</b>			
1. Authority to regulate all owners/operators (O/O) of TSDFs EPA regulates under 40 CFR Parts 264 and 266, and to adopt technical standards, requirements, and prohibitions that are no less stringent than, and consistent with, the federal TSDF requirements.	271.12	§3004	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11126, 324.11127, and 324.11137
2. Authority to require corrective action in a manner that is no less stringent than, and consistent with, the federal corrective action requirements.	271.12	§3004(a)(6), (u) and (v)	MCL 324.11102(2) and (5), 324.11104(5) and (10), 324.11105, 324.1115a, 324.1115b, 324.11126, and 324.11127
Remarks of the Attorney General: None			
<b>VI. LAND DISPOSAL RESTRICTIONS</b>			
Authority to enact land disposal restrictions that are no less stringent than, and consistent with, the federal land disposal restrictions in 40 CFR Part 268.	271.25	§3004(d)-(g), (i), and (m)	MCL 324.11103(3), 324.11105, and 324.11126 to 324.11128
Remarks of the Attorney General: None			
<b>VII. PERMITS FOR HAZARDOUS WASTE TSDFs</b>			
1. Authority to require permits for O/O of all TSDFs in a manner that is no less stringent than, and consistent with, the federal permit requirements under 40 CFR Parts 270 and 124.	271.13(a)	§3005(a)	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139
2. Authority to require permit application information (including exposure information) and to issue permits containing all technical and administrative standards for TSDFs and any conditions necessary to protect human health and the environment.	271.13(a) 271.14	§§3005(b), (c)(3), and (g), and 3019(a)	Same as above
3. Authority to provide for permit modification and termination (revocation) in a manner that is no less stringent than, and consistent with, the federal program.	271.13(d) 271.14	§3005(c) and (d)	Same as above
4. <u>Interim Status:</u> Authority to authorize O/O of TSDFs to operate under interim status if the facility would qualify for interim status under the federal program. <sup>8</sup>	271.13(a)	§3005(e)(1)	Same as above
5. <u>Interim Status:</u> Authority to require interim status to terminate under conditions that are equivalent and consistent with the federal program. <sup>9</sup>	271.13(a)	§3005(e)(2) and (3)	Same as above
6. <u>Interim Status:</u> Authority to require interim status facilities to comply with standards at least as stringent as those in 40 CFR Part 265.	271.13(a)	§§3005(e)(1), (h), and (i), and 3015	Same as above
7. <u>Interim Status:</u> Authority to require interim status impoundments to comply with the double liner, leachate collection, and groundwater monitoring requirements applicable to new units or stop treating, receiving, or storing hazardous wastes. (SR1) <sup>10</sup>	271.13(a)	§3005(j)	Same as above



8. (Optional): Authority to modify the double liner, leachate collection, and groundwater monitoring requirements for impoundments in §3005(j)(1) if prior to October 1, 1984; the O/O has entered into a consent decree, order, or agreement with EPA or an authorized state that requires correction and provides protection of human health and the environment at least equivalent to §3005(j)(1). (SR2) <sup>4</sup>	271.13(a)	§3005(j)(2)-(9) and (13)	Same as above
Remarks of the Attorney General: None			
<b>VIII. PUBLIC PARTICIPATION</b>			
Authority to adopt public participation procedures for the permitting process.	271.14(v) - (aa)	§7004(b)	MCL 24.291 and 24.292, 324.11105, 324.11126, and 324.11127, and MAC R 299.9509 to R 299.9511 and R 299.9513 to R 299.9515
Remarks of the Attorney General: None			
<b>IX. REQUIREMENTS FOR USED OIL MANAGEMENT</b>			
Authority to promulgate regulations establishing special generator and transporter standards, performance standards, and other requirements as may be necessary to protect human health and the environment from hazards associated with recycled used oil, in 40 CFR Part 279. <sup>5</sup>	271.26	§3014(a), (c) and (d) <sup>6</sup>	MCL 324.11103(3), 324.11105, and 324.11126 to 324.11128
Remarks of the Attorney General: None			
<b>X. INSPECTIONS</b>			
Authority to enter, inspect, and obtain samples at all regulated premises and any location where records are kept.	271.15(c)	§3007	MCL 324.11105, 324.11124, 324.11126, 324.11127, 324.11144, and 324.11146
Remarks of the Attorney General: None			
<b>XI. ENFORCEMENT REMEDIES (INCLUDING PUBLIC PARTICIPATION IN ENFORCEMENT)<sup>6</sup></b>			
1. Authority to immediately restrain unauthorized activity.	271.16(a)(1)	§3006	MCL 324.11105, 324.11126, 324.11148, 324.11150, and 324.11151
2. Authority to sue to enjoin any threatened or continuing program violation without prior revocation of permit.	271.16(a)(2)	§3006	Same as above
3. Authority to obtain civil penalties for any violation (maximum no less than \$10,000/day).	271.16(a)(3)(i), (b), and (c)	§3006	Same as above
4. Authority to obtain criminal penalties for specified maximum violations (no less than \$10,000/day and imprisonment with maximum no less than 6 months); burden of proof no greater than under federal law.	271.16(a)(3)(ii) & (b)	§3006	Same as above
5. Authority to allow public intervention.	271.16(d)	§7004	MCL 324.11126 and 324.11151(11)
6. Optional: Require that neither state nor citizens may bring action against common carriers for imminent hazards arising after delivery of shipment to consignee, provided the carrier exercised due care when handling the work.	Not required	§7002(g) §7003(a)	N/A
Remarks of the Attorney General: None			
<b>XII. SHARING OF INFORMATION WITH EPA</b>			
Authority to share all information with EPA	271.17(a)	§3007(b)	MCL 324.11129
Remarks of the Attorney General: None			
<b>XIII. EXPOSURE ASSESSMENTS</b>			

Authority to make exposure and health assessment information available to the Agency for Toxic Substances and Disease Registry (See CERCLA, 1980 PL 96-510 §104(i)) (SI) <sup>4</sup>	Not in 40 CFR Part 271	§3019(b)(1)	Same as above
Remarks of the Attorney General: None			
<b>XIV. RADIOACTIVE MIXED WASTE</b>			
Authority to regulate hazardous waste that is radioactive except to the extent that the waste is source, special nuclear, or byproduct material, as defined by the Atomic Energy Act of 1954, as amended. (68 Stat. 923) (MW) <sup>4</sup> <sup>vi</sup>	271.9(a)	§1004(27)	MCL 324.11103(3), 324.11105, and 324.11126 to 324.11128
Remarks of the Attorney General: None			
<b>XV. AVAILABILITY OF INFORMATION</b>			
Authority to make information about TSDFs available to public in substantially the same manner and to the same degree as if EPA were running program (AI) <sup>4</sup>	271.17(c)	§3006(f)	MCL 324.11129
Remarks of the Attorney General: None			
<b>XVI. ADDITIONAL MISCELLANEOUS AUTHORITIES</b>			
1. Authority to grant variances and exemptions that are no less stringent than Subtitle C of RCRA. <sup>viii</sup>	Not required	N/A	MCL 324.11105 and 324.11126 to 324.11128
2. Importation ban. <sup>ix</sup>	Not required	N/A	N/A
3. Siting. <sup>x</sup>	Not required	N/A	MCL 324.11105, 324.11121, and 324.11123 to 324.11128
4. Authority to adopt existing and/or future federal regulations reference (current and prospective incorporation by reference). <sup>x</sup>	N/A	N/A	MCL 324.11126 and 324.11127 (Authority to adopt current regulations but not regulations prospectively)
5. Limitation on state authority to adopt more stringent or broader in scope provisions.	N/A	N/A	N/A
Remarks of the Attorney General: None			

### EXPLANATORY NOTES

<sup>4</sup> States must have authority to regulate the recycling and reuse of hazardous waste in a manner at least as stringent as the federal program.

<sup>5</sup> States not required to provide interim status for TSDFs. However, if a state chooses to provide for interim status, then state must have authority described in Items 4 through 8 of Section VII.

<sup>6</sup> State's analog to interim status (IS) must terminate automatically in such cases (whether state's analog is 40 CFR Part 265, type standards/permits). If state statute or regulation would require any type of hearing to terminate facility's operating authority, state must amend its authority to delete that requirement for these provisions. IS as used here means state's analog to federal IS.

<sup>7</sup> The following items are part of the "Statutory Nonchecklisted Provisions addressed in Appendix N of the hard copy version of State Authorization Manual- Guidance for State Authorization Issues: AI-Availability of Information, MW-Mixed Waste, SI-Sharing of Information, SR1-Surface Impoundment Requirement, and SR2-Optional: Exemptions from the Surface Impoundment Requirements. Also, see Availability of Information Checklist for specific analysis of manner and degree that EPA provides for information availability.

<sup>8</sup> This used oil management authority originated at §3012 but was amended and redesignated as §3014(a) by HSWA.

<sup>9</sup> RCRA contains enforcement provisions that differ from 40 CFR §271.16. Thus, the enforcement authority of an authorized state program need not be equivalent to RCRA enforcement provisions. Instead, state's authority should be adequate to meet requirements in 40 CFR §271.16, which were established pursuant to §§3006 and 7004.

<sup>10</sup> EPA has determined that hazardous wastes are subject to RCRA if they are mixed with source, special nuclear, or byproduct material even though source, special nuclear, or byproduct material itself is not subject to RCRA. States will need to review their authority to ensure that only source, special nuclear, or byproduct material is excluded from their hazardous waste jurisdiction.

<sup>11</sup> Various HSWA provisions amend RCRA to allow EPA to grant variances and exemptions. In addition to the variances specifically authorized by statute, HSWA allows EPA to develop regulations with variance provisions or to make case-by-case variance decisions. EPA strongly recommends states obtain the above authority. State's variance procedures and decision criteria must be no less stringent than EPA's.

<sup>12</sup> May create problems for authorization. States with this authority should ensure that its statutory and regulatory provisions do not conflict with EPA's requirements for imports/exports and transportation.

<sup>13</sup> May create problems for authorization. States with this authority should ensure that its statutory and regulatory provisions do not conflict with EPA's permitting requirements.

<sup>14</sup> For prospective incorporation by reference (IBR) of federal regulations, the AG must cite state authority that enables it to both promulgate and enforce regulations in this manner. States that IBR prospectively should provide discussion on the constitutionality of the procedure within state. Appropriate court case citations should also be provided.